

Ravalli

County  
MONTANA

REGINA PLETTENBERG  
RAVALLI COUNTY CLERK & RECORDER  
215 SOUTH 4<sup>TH</sup> STREET, SUITE C  
HAMILTON, MT 59840  
(406) 375-6555

RECEIVED

SEP 02 2008

Ravalli County Commissioners

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August 29, 2008

Greg Chilcott  
HAND-DELIVERED

RE: Zoning petition

Mr. Chilcott:

Enclosed is your petition which has been reviewed by our County Attorney. Upon his advice, I will be accepting this petition for circulation. Also enclosed with this letter is a copy of the County Attorney's memo. Please be sure to make the noted changes to the language on the petition before you begin your signature gathering process. The number of necessary signatures you have listed on the petition are accurate.

If you have any questions, please do not hesitate to contact me.

Sincerely,



REGINA PLETTENBERG  
Ravalli County Clerk and Recorder

Enc:

**COPY**




## RAVALLI COUNTY ATTORNEY

*George H. Corn, County Attorney*  
*T. Geoffrey Mahar, Chief Deputy*  
*John Bell, Deputy*  
*Karen Mahar, Deputy*  
*William E. Fulbright, Deputy*

Ravalli County Courthouse  
205 Bedford Street, Suite C  
Hamilton, MT 59840  
Phone (406) 375-6750  
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### MEMO

**TO:** Regina Plettenberg, Clerk & Recorder

**FROM:** George Corn 

**DATE:** August 29, 2008

**RE:** Review of petition to require all zoning regulations to be put to a vote

Dear Regina:

This memo constitutes review under M.C.A. §7-5-134 of the Petition submitted to you August 8, 2008, proposing an initiative to adopt a resolution requiring any county-initiated zoning to be put to a vote of Ravalli County electors before becoming effective. The Petition as submitted is defective as to form regarding a few minor matters. If the suggested changes are made as requested, the Petition should be sufficient.

After review, the Petition as submitted needs the following corrections:

- 1) The number of registered voters contained in the first and second paragraphs should be verified by you to ensure it accurately reflects 15% and 25% of the individuals registered to vote at the preceding general election per §7-5-134(1), MCA. You specifically asked me to clarify which individuals constitute "qualified voters" for the purposes of this petition. Under 52 MT Atty. Gen. Op. 6 (2008), because this is a zoning regulation initiative the qualified voters (and hence voters who may sign the initiative petition) are all the residents of Ravalli County, including those residing within incorporated areas.
- 2) The ballot statement should be modified to read as follows:

The initiative would adopt a resolution requiring any permanent county-initiated zoning regulation or map adopted or amended by the Ravalli County Commissioners to be placed on the next regular election ballot, and providing that such zoning regulation or map shall not be valid unless and until a majority of Ravalli County qualified electors approve it.

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- 3) The Statements of Implication should read as follows:
  - ☐ **FOR** adopting a resolution requiring county-initiated zoning regulations and maps to be put to a vote of Ravalli County qualified electors before becoming effective.
  - ☐ **AGAINST** adopting a resolution requiring county-initiated zoning regulations and maps to be put to a vote of Ravalli County qualified electors before becoming effective.
- 4) In the paragraph after the Statement of Implication, the word "ordinance" should be changed to "resolution."
- 5) In regard to the proposed text of the Resolution itself, I suggest the following changes:
  - The second paragraph should be amended to specify that the 2006 initiative adopted *an interim* zoning regulation and that *interim* zoning regulation was extended.
  - The <sup>2nd</sup> ~~tenth~~ paragraph contains a potentially misleading summary of the law in that what is termed COUNTY ZONING also already requires the affirmative consent of the majority of those landowners zoned. See §76-2-205, MCA. Because this language implies that COUNTY ZONING statutes do not contain landowner consent provisions, I suggest that this paragraph be deleted. It does not appear to me to be necessary to the intent or content of the resolution itself.
  - In the paragraph setting forth the actual resolution, the language should state that any COUNTY ZONING shall be placed on *the next* regular election ballot, unless it is the intent of the drafters to allow the Clerk & Recorder or Commissioners to choose on which regular election the vote appears. Assuming that it is intended the issue be held on the next available regular election, I have similarly modified the language in the Ballot Statement above.
  - Also in the resolution paragraph, the "majority of voters" should be changed to "majority of qualified electors...."

If the above-noted changes are made as suggested or otherwise addressed appropriately, the initiative petition and proposed resolution should be acceptable as to form.

In regard to review to determine whether the petition involves a matter subject to the initiative process, I note for you and the petition proposers that there is some question under Montana law regarding whether the intent of the petition to create a future voting requirement is appropriate for a petition. The Commissioner Minutes from the August 13, 2008 public meeting discussing this proposed measure indicates that the petition proposers, including Commissioner Chilcott who presented it to you, believe the citizens have a right to enact such a permanent resolution to require a vote on any and all zoning enacted by future commissions. It is important to point out that the group who drafted the petition for Commissioner Chilcott includes citizens whose subdivisions have been

turned down and who have sued the county, as well as the lawyers who represent them and other individuals who have filed suits regarding subdivision denials and the interim zoning measure. Because of this, it is certainly understandable that these persons would wish to see such a resolution as being "non-repealable" and there is certainly nothing illegal in their actions in taking steps to ensure that.

However, I question whether such a "non-repealable" resolution would ultimately withstand a court challenge in regard to binding future boards of commissioners. Under §7-5-131(1), MCA, "(r)esolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government...may be proposed" by initiative. There is a clearly established legal principle in Montana that legislatures generally cannot pass legislation which a future legislative body may not repeal. *See, e.g. Butte-Silver Bow Local Gov't v. State* (1989) 235 Mont. 398, 406. If under §7-5-131, MCA, the voters' initiative powers are limited to resolutions within the legislative power of the governing body, the logical conclusion would be that if the current governing body can not pass legislation which a future body may not repeal, the voters are likewise limited.

This conclusion seems to be supported by the specific language of §7-5-137, MCA, which states that an ordinance enacted pursuant to an initiative may not be repealed by the governing body for two (2) years. Previous litigation in the Twenty-First Judicial District Court in Ravalli County has indicated that the term "ordinance" may be interpreted synonymously with "resolution" in the context of initiatives which establish legislative acts which have the force of law. *See Opinion and Order in Ravalli Co. v. Citizens for Econ. Dvlpt.*, DVO6-260, p. 25. Accordingly, §7-5-137, MCA, appears to specify that any initiative action by the electors may not be repealed for a maximum of two (2) years following enactment. The drafters of the petition have not provided any legal authority for the proposition that the voters of Ravalli County may enact a non-repealable resolution, and I was unable to locate any such legal support in the statutory time allowed for review of this petition. However, this argument only goes to the length of the effect of the resolution, not the right of the people to vote on whether to enact it in the first place.

Given the above, it appears that under the applicable law that the resolution, if adopted, could in fact be repealed by a subsequent governing body or Ravalli County qualified voters after the two (2) year waiting period set forth in §7-5-137, MCA, lapses. I am notifying you of this issue only so that your office, the petition drafters, and the public are fully informed that questions may arise in the future should the initiative resolution be passed by voters and a later board attempts repeal. However, these legal concerns about future repeal do not effect approval of the currently proposed petition and resolution as to form, as the petition and resolution do not contain any language stating the resolution may not be repealed. Please let me know if you have any additional questions.

GHC:hs

cc: Ravalli County Commissioners

PETITION TO PLACE INITIATIVE NO. \_\_\_\_ ON THE ELECTION BALLOT

If at least 15% of the registered voters in Ravalli County, Montana sign this petition and the total number of voters signing this petition is at least 4317, this measure will appear on the next regular election ballot. If a majority of voters vote for this measure at that election, it will become law.

If at least 25% of the registered voters in Ravalli County, Montana sign this petition and the total number of voters signing this petition is at least 7195, we, the undersigned registered voters of Ravalli County, Montana request that the Ravalli County Election Administrator place this measure on the earliest possible special elections ballot. If a majority of voters vote for this measure at that election, it will become law.

(Proposed) BALLOT STATEMENT

RECEIVED  
AUG 08 2008

This initiative would adopt a resolution requiring that any permanent county-initiated zoning regulation or map adopted or amended by the Ravalli County Commissioners shall be placed on a regular election ballot, and shall not be valid unless and until a majority of voters at that election approve it.

(Proposed) STATEMENT OF IMPLICATION

☐ **FOR** adopting a resolution requiring any and all zoning regulations and maps be put to a vote of the Ravalli County electorate before being effective.

☐ **AGAINST** adopting a resolution requiring any and all zoning regulations and maps be put to a vote of the Ravalli County electorate before being effective.

Voters are urged to read the complete text of the ordinance attached to this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

**WARNING:** A person who purposely signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Ravalli County, Montana voter is subject to a \$500 fine, 6 months in jail, or both. Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

Signature	Date	Address as Shown on Voter Registration Card	Last Name (please print)	First Name, Middle Initial (please print)
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

Resolution No. \_\_\_\_\_

**WHEREAS**, Montana Code Annotated §§ 7-5-131 through 7-5-137 (2007), provide a method for Ravalli County voters to propose and adopt resolutions for Ravalli County, Montana; and

**WHEREAS**, on November 7, 2006, the voters of Ravalli County, Montana passed an initiative which adopted a zoning regulation limiting subdivisions in Ravalli County to a density of 1 residence per 2 acres, for a period of one year, and that regulation was extended on October 20, 2007 for an additional year by the Ravalli County Board of Commissioners; and

**WHEREAS**, the Ravalli County Commissioners have directed the Ravalli County Planning Department to prepare permanent zoning regulations and maps for all or most of Ravalli County, and have hired multiple outside consultants to do the same; and

**WHEREAS**, the power of the Ravalli County Commissioners to zone property in the absence of an affirmative request to do so by a majority of the affected landowners is derived from Montana Code Annotated Title 76, Chapter 2, Part 2 (COUNTY ZONING); and

**WHEREAS**, the Ravalli County Board of County Commissioners also has the authority to zone property pursuant to a request from those landowners wishing to be zoned, which is derived from Montana Code Annotated Title 76, Chapter 2, Part 1 (VOLUNTARY ZONING) and to institute zoning regulations or maps in response to an emergency, derived from Montana Code Annotated §§ 76-2-206 (INTERIM ZONING); and

**WHEREAS**, Ravalli County has spent hundreds of thousands of dollars since November 2006 considering permanent zoning maps and regulations; and

**WHEREAS**, permanent COUNTY ZONING regulations and maps would create significant changes in the uses allowed on land in Ravalli County, and are therefore of the utmost concern to the residents of Ravalli County, and constitute the most important governmental action in recent memory, as well as the most complicated and complex; and

**WHEREAS**, the right of citizens to vote and therefore control their own affairs is possibly the most fundamental, inalienable right of Americans; and

**WHEREAS**, the right to citizen democracy is not preserved if citizens cannot vote on a matter as important as COUNTY ZONING; and

**WHEREAS**, VOLUNTARY ZONING already requires the affirmative consent of the majority of those landowners zoned, and the emergency requiring action by INTERIM ZONING regulations cannot wait until an election can be held.

**NOW THEREFORE**, it is resolved that the voters of Ravalli County do establish a resolution that an act of the Ravalli County Board of Commissioners creating a COUNTY ZONING map or COUNTY ZONING Regulation, or amendment to either, shall not be effective until and unless it is placed on a regular election ballot and a majority of voters at that election approve it. This resolution does not apply to VOLUNTARY ZONING or INTERIM ZONING regulations or maps.

This Resolution shall become effective upon passage by the qualified electors of Ravalli County.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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Attest: Ravalli County Clerk & Recorder